

Message

From: Mann, Teresa [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5E788B7B43DC484FA765A01B844E8052-MANN, TERESA]
Sent: 7/24/2017 2:35:14 PM
To: Ware, Ethan [eware@williamsmullen.com]; King, Jessica [jking@williamsmullen.com]
CC: Luetscher, Greg [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4bfc6eb465a543128e5c7e7df9f982ce-Luetscher, Gregory]
Subject: RE: Letter to Highland Industries, Inc. [IWOV-IWOVRIC.FID1622654]

Ethan-

Your understanding is partially correct. The EPA is able to make some revisions to the Removal Model Administrative Order on Consent (AOC) and has been doing so based upon your representation that your client wanted to perform some of the work at the site. In fact, I told you that I had been speaking with Headquarters about the revisions you had requested. However, it does not see prudent to provide you with a revised AOC if your client will only enter into an AOC that provides a covenant not to sue and contribution protection for the Site, which the EPA cannot provide.

We were surprised to see in the letter dated July 21, 2017 that your client was still asking for a covenant not to sue and contribution protection for the Site. We believed based on our last telephone conversation that we had worked through that issue and your client had agreed to the standard Removal AOC covenant not to sue and contribution protection. As I stated in my last email, if your client is willing to accept the covenant and contribution protection offered by the EPA, then the EPA will be happy to provide you with a revised draft AOC for your consideration that is based on the Removal Model AOC, not a de minimis AOC. We just want to make sure that we are on the same page on the covenant and contribution protection from the start instead of spending the time and money to negotiate an AOC that in the end will not have covenant and contribution protection that is acceptable to your client.

The EPA needs to know if your client is in agreement with the covenant and the contribution protection that the EPA is able to provide and with the settlement being memorialized in a Model Removal AOC. If so, we are happy to speak with you further this morning to discuss the revisions that can be made to the AOC, explain why some revisions cannot be made, and provide you with a revised AOC to consider this week.

Thank you.
Teresa

From: Ware, Ethan [mailto:eware@williamsmullen.com]
Sent: Monday, July 24, 2017 10:00 AM
To: Mann, Teresa <Mann.Teresa@epa.gov>; King, Jessica <jking@williamsmullen.com>
Cc: Luetscher, Greg <Luetscher.Greg@epa.gov>
Subject: RE: Letter to Highland Industries, Inc. [IWOV-IWOVRIC.FID1622654]

Ms. Mann and Mr. Luetscher-

From Ms. Mann's email, we understand there is no need for the previously scheduled telephone call today at 10:15. "[T]he covenant not to sue, contribution protection, and document in which the settlement will be embodied are not negotiable," so the offer is a take or leave it offer.

We will consider Ms. Mann's email a final offer. Given terms of the Model Order are non-negotiable, we may or may not be able to accept the proposal by 5:00 pm, but to date, EPA has not responded to our suggested changes to the Draft Model 107 Order sent April 28, 2017. It would allow us to better understand the pending offer, if EPA could respond to those changes. We cannot accept an offer we have not seen.

We understand the urgency you have expressed. To that end, we submitted a settlement offer to perform all of the work EPA considers necessary (and fund that work you are now performing) on November 21, 2016, and again on multiple occasions from March to June, 2017, when we did not hear back from EPA. EPA began work without our participation under a Time Critical Removal Action Memorandum and without our assistance on your own volition shortly after that. We did not receive a final reply from EPA until July, 2017.

To assist us evaluate the offer, we request the United States provide support for claims in your email it has not yet determined Highland "did not contribute to the release [of PCB]." EPA has not provided Highland documents, testimony, or other information to support the allegation the company may have contributed to the release of PCB, but the company has presented substantial evidence to support its position to the contrary. If you have evidence, testimony, information, or documents indicating Highland contributed to the release of PCB at the Burlington Plant Site, we believe the information must be produced under our outstanding FOIA requests, including but not limited to FOIA Request No. EPA-R4-2017-009529 (July 18, 2017).

Let us know if you have any questions. We will be here all day.

Ethan.

From: Mann, Teresa [<mailto:Mann.Teresa@epa.gov>]

Sent: Monday, July 24, 2017 8:16 AM

To: King, Jessica <king@williamsmullen.com>; Ware, Ethan <eware@williamsmullen.com>

Cc: Luetscher, Greg <Luetscher.Greg@epa.gov>

Subject: RE: Letter to Highland Industries, Inc.

Good morning Ethan and Jessica-

This email is in response to your letter to Greg Luetscher dated July 21, 2017, regarding Highland Industries, Inc. (Highland) offer to perform a portion of the removal action at the Burlington Industries, Inc. Site (Site). The EPA would like to thank Highland for its offer to perform the removal action on the Western Ditch (and associated mounds), the Highland Plant property, and the Huckleberry Park (Highland Work) at the Site. However, the EPA is unable to accept the terms under which Highland is offering to perform the removal action.

The EPA has considered Highland's request that it be considered a de minimis landowner under CERCLA 122(g)(1)(B). At this stage, the facts do not show that Highland meets the requirements of the statute to be considered a de minimis landowner. In your letter, you cite to only a few of the requirements that are necessary for a Potentially Responsible Party (PRP) to be considered a de minimis landowner. The EPA is evaluating Highland's eligibility as a de minimis landowner under all of the statutory requirements. In addition, the statement in your letter that "[t]he EPA has acknowledged that it does not believe Highland Industries, Inc. contributed to the release of PBCs at the Site" is incorrect. As we have said to you numerous times, the EPA is still in the processing of investigating the releases at the Site. The EPA has not determined the full extent of Highland's responsibility as a PRP at the Site. The EPA will continue with its PRP search and fully evaluate all information that the EPA obtains. If there is additional information that Highland would like to provide to EPA to consider, the EPA is happy to review it.

In your letter, Highland offered an "alternative" settlement to perform the partial removal action on the properties described above and said that such a settlement should include a covenant not to sue and contribution protection from the EPA for the Site, among other requirements. On behalf of the EPA, I have stated to you in my previous email and in numerous telephone conversations that the EPA cannot give Highland a covenant not

to sue or contribution protection for the Site. The EPA stands ready to negotiate a settlement agreement with Highland to perform a partial removal action for the Highland Work in which the EPA will provide Highland with a covenant not to sue for the work performed and contribution protection for the “matters addressed” in the AOC, which are the work and the payment of Future Costs (as defined in the CERCLA 106/107 Model Removal Administrative Order on Consent (Model Removal AOC)). This is the standard covenant not to sue and contribution protection that is offered to all PRPs who perform a removal action. The settlement must be memorialized in the Model Removal AOC, which is the standard document that the EPA uses for all PRPs who perform removal actions.

At this time, the EPA is focusing on conducting the removal action necessary to protect human health and the environment, which means removing polychlorinated biphenyls (PCBs) from areas on the Site, including the yards of residences, a public park, the Highland Plant Property, and the western ditch that abuts the residential properties. The EPA has offered Highland the opportunity to perform the work at the Site the EPA has not yet started. If Highland would like to perform the Highland Work at the Site under the Model Removal AOC that provides Highland with a covenant not to sue for the work performed and contribution protection for the “matters addressed,” which are defined in the Model AOC as the work and the payment of Future Costs, please let the EPA know by 5:00 pm today in writing. Otherwise, the EPA will assume that Highland does not want to perform the Highland Work or any other removal action at the Site.

Greg Luetscher and I are happy to participate in the conference call scheduled with you today at 10:15 am to discuss the next steps for Highland to enter into a Model Removal AOC to perform the Highland Work under an expedited schedule. However, the covenant not to sue, contribution protection, and document in which the settlement will be embodied are not negotiable. Please send us an email to let us know if you would still like to have the call this morning.

Thank you.
Teresa Mann

Teresa Mann
U.S. EPA, Region 4
(404)-562-9572

From: King, Jessica [<mailto:jking@williamsmullen.com>]
Sent: Friday, July 21, 2017 12:16 PM
To: Luetscher, Greg <Luetscher.Greg@epa.gov>; Mann, Teresa <Mann.Teresa@epa.gov>
Cc: Ware, Ethan <eware@williamsmullen.com>; Thomas, Jessica <jthomas@williamsmullen.com>; Childers, Kristie <kchilders@williamsmullen.com>
Subject: July 21 2017 Highland Ltr to EPA: CONFIDENTIAL SETTLEMENT NEGOTIATIONS [IWOV-IWOVRIC.FID1622654]

Greg and Teresa – As requested, attached please find Highland Industries, Inc.’s most recent good faith offer which we discussed with EPA during our call yesterday. Ethan Ware and I look forward to hearing from you after you have consulted with your client.

Thanks,
Jessie

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